

Chapter 6. Suspensions, Removals and Reductions in Rank

6.1 General Provisions

The Council shall have power to determine in each instance whether a decrease in salary shall constitute a reduction in rank. All suspensions, removals and reductions in rank shall be made only in accordance with these Rules and Regulations.

6.2 Restrictions

Persons employed in the Police Department of the Borough shall not be suspended, removed or reduced in rank for any non-merit factor.

6.3 Grounds for Disciplinary Action

A.No person in the police department of the Borough shall be removed from employment, suspended or reduced in rank except for the following reasons:

- 1.Physical or mental disability affecting the officer's ability to continue in service, evidenced by the certification to that effect by a medical doctor and/or psychologist designated by the commission, in which cases the persons shall receive an honorable discharge from service;
- 2.Neglect or violation of any official duty;
- 3.Violation of any law of the Commonwealth which provides that such violations constitute a misdemeanor or felony;
- 4.Inefficiency, neglect, intemperance, disobedience of orders, or conduct unbecoming an officer;
- 5.Intoxication while on duty; or
- 6.Engaging or participating in or conducting any political or election campaign for any reason other than to exercise his or her own right of suffrage.

B.No officer shall be removed for religious, racial or political reasons. A statement of any charges made against any officer so employed shall be furnished to the officer within five (5) days after those charges have been adopted by the Borough Council.

6.4 Punishment

An offense against discipline, good conduct and efficiency, may be punished by:

- A.Removal from service;
- B.Where an employee resigns in lieu of being dismissed, that fact must be reflected in the employee's personnel file.
- C.Reduction in rank;
- D.Reduction in rate of pay;
- E.Suspension without pay for a specified period of time; or
- F.Written reprimand. Note: The concept of an unwritten warning, notice or reprimand is not part of these rules.

6.5 Procedure

No officer shall be suspended, removed or reduced in rank until they have first been provided with a hearing of the type required in *Cleveland Bd. of Pub. Ed. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487 (1985) (This is an informal proceeding which does not involve the Commission.). A hearing must occur before the imposition of discipline except when it is imperative that Borough Administrators take immediate action, usually in the form of suspension without pay, to protect the best interests of the Borough, its citizens, taxpayers, and/or the Department. Officers may, if they so request, be accompanied by a fellow officer/union representative during the Loudermill proceeding.

Whenever any police officer is suspended, removed from service or reduced in rank by Council, the Mayor or the Chief of Police, the reasons for this action shall be reflected in a written specification of charges. This specification of charges shall include separate, specific statements of each allegation made and shall specify the time, place and occurrence on which the charge is based. The allegations shall be stated clearly and in sufficient detail to enable the accused to understand the charges made against him or her and to be able to answer them, and shall include references to statutory law, Borough ordinances, police department rules and regulations, or any other relevant authority alleged to have been violated. In addition, as to each specific charge, the factual basis for the alleged violation shall be provided.

Within five (5) working days of the receipt of any charges, the Commission shall deliver to the accused, either by personal service or by certified or registered mail, a copy of the charges filed against him or her.

6.6 Hearing on Removal, Suspension or Reduction in Rank

The officer who has been suspended, removed, fined or reduced in rank may appeal the decision of the Borough Council by written notice to the Secretary of the Commission requesting a hearing. Such written demand for hearing must be made and delivered not more than five (5) working days following the officer's receipt of the notice of discipline. The officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the officer to provide written answers to any charges shall not be deemed an admission by the officer.

The Commission shall schedule a hearing within ten (10) days of the filing of written charges, unless continued by the Commission for cause at the request of the Commission, the Borough or the officer. At any such hearing, the officer against whom the charges have been made may be present and represented by counsel, may call witnesses and present testimony and documentation in defense. The Borough may also be represented by counsel, call witnesses and present evidence and documentary evidence as is necessary to support the charges. A stenographic record of all testimony shall be taken at every hearing and preserved by the Commission. In the event the charges are dismissed, the record shall be sealed and not made available for public inspection. It is the right of the officer seeking the hearing to have the hearing open or closed.

In conducting the hearing, the Commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reasons given for the disciplinary action. If the Commission finds that sufficient evidence has been introduced to support the charge, the Commission shall not modify the penalty imposed by the Borough unless it finds that the penalty was arbitrary, discriminatory or an abuse of the Borough's discretion. In considering the appropriateness of the discipline, the Commission may request post hearing briefs, and shall issue a written decision containing specific findings of fact and conclusions of law. The Commission is the finder of facts including, but not limited to, findings regarding credibility

6.7 Notice of Hearing

Notice of the date, time and place for each hearing shall be given in the following manner:

- A. Either by personal service or by certified or registered mail to each of the principals involved in the case, and;
- B. By mailing a notice to all other parties who have stated an interest in the hearing; provided, however, that any failure to give the notice required by this subsection shall not invalidate any subsequent action taken by the Commission.

6.8 Hearing Procedure.

Each hearing shall be conducted in the following manner:

- A. The Chairperson shall call the hearing to order, state the general purpose of the hearing and make note of the parties present;
- B. The Secretary, upon direction of the Chairperson, shall read the charges against the accused together with the record of action taken against such officer;
- C. The Secretary shall read any written reply of the accused;
- D. The Chairperson shall afford each person making charges, or his or her counsel, an opportunity to make further statement in support of the charges and to produce any witness;
- E. The Chairperson shall afford the accused, or his or her council, an opportunity to question or cross-examine the person making charges, and to question or cross-examine any witness produced by such person;
- F. The Chairperson shall afford each person making charges an opportunity to produce any witness and to make a summation;
- G. The Chairperson shall afford the accused, or his or her counsel, an opportunity to produce any witness and to sum up the defense;
- H. The Commission shall be the judge of admissible evidence and procedure, and shall not be bound by technical rules of evidence; and
- I. A stenographic record of all testimony taken at such hearings shall be filed with and preserved by the Commission, which record shall be sealed and not be available for public

inspection in the event the charges are dismissed.

The Commission, at any time during the course of the hearing, may question or cross-examine the person making charges, the accused, and any witness. The Commission may appoint and utilize as a "hearing officer" an attorney experienced in Local Agency Law/Civil Service proceedings to advise it, make evidentiary rulings, respond to objections, etc.

6.9 Oaths

All testimony shall be given under oath. The Chairperson, or in her or her absence the Vice-Chairperson, shall administer all oaths.

6.10 Decision of the Commission

Within thirty (30) calendar days after receipt of the completed transcript(s) of the hearing the Commission shall issue its decision in the form of a written order approved by at least two (2) members of the Commission. That written adjudication, to become official, must be adopted by majority vote of the Commission in a public meeting, appropriately advertised pursuant to the Sunshine Law. The written order shall be in the form: findings of fact, conclusions of law, discussion, and order. The only aspect of the adjudication which shall be publicly read, and provided to the public, unless the affected/accused employee has requested an open hearing, shall be the "order" section. If resolving the charges involves the making of credibility determinations, the adjudication shall specify the resolution of those credibility determinations. Necessary findings of fact should be supported by substantial evidence of record. Absent evidence of arbitrary or discriminatory conduct, or an abuse of discretion, the Commission has no authority to modify the penalties imposed by borough officials where the charges brought against the affected/accused officer are found by the Commission to be supported by the evidence and where the penalties are not otherwise prohibited. The findings and decision of the Commission shall be delivered personally or by certified or registered mail to the parties.

6.11 Appeals to Court

In the event the Commission sustains the charges and orders the suspension, removal or reduction in rank, the person so suspended, removed or reduced in rank shall have immediate right to appeal to the Court of Common Pleas of Adams County, such appeal to be taken by petition to said court within thirty (30) days from the date of entry by the Commission of its final order. The Commission shall note on the letter covering the adjudication to the affected/accused employee that the individual has a right to appeal and that the time for appeal begins to run with receipt of the Commission's adjudication, and that to be timely, any such appeal must be perfected within thirty (30) days from the date of entry by the Commission of its final order. In the event the event that the Commission shall sustain or order a suspension of an employee, that order of suspension shall not be for a period longer than one (1) year.

6.12 Filing of Determinations of the Commission

All Commission findings, decisions and punishments shall be entered in the officer's personnel file. In the event that the Commission fails to uphold the charges, then the officer sought to be suspended, removed or demoted shall be reinstated with full back pay for the period of the suspension, removal or demotion and no charges related to the suspension, removal or reduction in rank shall be officially recorded in the officer's personnel file.

6.13 Furloughs

If for reasons of economy or other reasons, it shall be deemed necessary by the Borough to reduce the number of full time police officers in the Department, the Borough shall use the procedure described in the Collective Bargaining Agreement between the Gettysburg Borough and the Gettysburg Police Officer's Association in effect at that time. Should no procedure exist in the Collective Bargaining Agreement, the commonly accepted practice of furloughing the person or persons, including probationers, last appointed to the force will be used.